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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**
13

14 KYLE SAWYER, Individually and
on behalf of all others similarly
15 situated,

16 Plaintiff,

17 v.

18 BILL ME LATER, INC., EBAY
INC., PAYPAL, INC., and
19 DOES 1-100,
20 Defendants.
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Case No. CV-10-4461 SJO (JCGx)

**PROTECTIVE ORDER CONCERNING
CONFIDENTIALITY OF
DOCUMENTS AND MATERIALS**

Judge: Hon. S. James Otero
Magistrate Judge: Hon Jay C. Gandhi

**Discovery Document: Referred to
Magistrate Judge Jay C. Gandhi**

Pursuant to Federal Rule of Civil Procedure 26 and the parties' Stipulation Concerning Confidentiality of Documents and Materials filed concurrently herewith, the following [Proposed] Protective Order Concerning Confidentiality of Documents and Materials ("Order") shall govern the disclosure of Confidential Information and limit the use of such information produced in discovery in this action, as hereinafter provided:

1. Scope.

(a) All documents and information furnished by a party in conjunction with this litigation which contain or are derived from trade secrets or other confidential research, development, or commercial information of current commercial value ("Confidential Information") may be designated CONFIDENTIAL by said party and furnished to the other parties pursuant to the terms of this Order. The party receiving designated Confidential Information shall treat it as proprietary information and shall not use or disclose the information except for the purposes set forth in this Order or by such orders as may be issued by the Court during the course of this litigation. In addition, this Order shall apply to third-parties who provide discovery, by deposition or the production of documents or otherwise, in this litigation.

All documents and information described in Paragraph 1(a) as Confidential Information and which a party believes to be of a highly commercially sensitive nature, such as certain documents or information reflecting, containing or derived from current confidential trade secret, research, development, pricing, production, cost, marketing or customer information whose disclosure could create an unreasonable risk of commercial or competitive harm ("Highly Confidential Information") may be designated HIGHLY CONFIDENTIAL by said party and furnished to the other parties pursuant to the terms of this Order.

A party may designate as CONFIDENTIAL or HIGHLY CONFIDENTIAL information contained in documents that are in the possession of a third party if the

1 documents contain the party's Confidential or Highly Confidential information.
2 The provisions of this Order extend to all designated Confidential or Highly
3 Confidential Information produced in discovery in this action or actions. When an
4 electronic document produced in native format includes a designation of
5 CONFIDENTIAL or HIGHLY CONFIDENTIAL in the filename, the parties must
6 treat the entire document according to that confidentiality designation.

7 In addition to documents designated as CONFIDENTIAL or HIGHLY
8 CONFIDENTIAL under this Order, the parties understand that some otherwise
9 relevant documents may be subject to a regulatory or other governmental privilege
10 that may limit a party or third party's ability to produce such documents in this
11 action. The parties further acknowledge that to the extent relevant and responsive
12 information resides in jurisdictions other than the United States, production of such
13 information may require compliance with privacy requirements imposed by those
14 jurisdictions, including but not limited to the Privacy Directive of the European
15 Union. Such compliance may impose significant delays on the availability of any
16 such information.

17 (b) The parties acknowledge that this Order does not necessarily confer
18 blanket protections on all disclosures or responses to discovery and that the
19 protection it affords extends only to the limited information or items that are
20 entitled under the applicable legal principles to treatment as confidential. The
21 parties further acknowledge that this Stipulated Order creates no entitlement to file
22 Confidential Information under seal; Local Rule 79-5.1 of the Central District of
23 California and paragraph 4 below, set forth the procedures that must be followed
24 and reflect the standards that will be applied when a party seeks permission from
25 the Court to file material under seal.

26 (c) All documents and other materials produced in this litigation shall be
27 used for purposes of this litigation only, whether or not a producing party
28 designates such documents or materials as CONFIDENTIAL. All documents and

1 other materials produced in this litigation shall not be made public in any manner
2 unless and until such document are properly filed with this Court, whether or not a
3 producing party designates such documents or materials as CONFIDENTIAL.

4 2. Designation of Confidentiality.

5 Documents or information may be designated CONFIDENTIAL or
6 HIGHLY CONFIDENTIAL within the meaning of this Order in the following
7 ways:

8 (a) In the case of documents and the information contained therein,
9 designation shall be made by means of the following legend placed on each page of
10 any such document: CONFIDENTIAL, or HIGHLY CONFIDENTIAL.

11 (b) In the case of interrogatory answers, responses to requests for
12 admissions and the information contained therein, designation shall be made by
13 means of a statement in the answers or responses specifying that the answers or
14 responses or specific parts thereof are designated CONFIDENTIAL or HIGHLY
15 CONFIDENTIAL. The following legend shall be placed on the front of any set of
16 interrogatory answers or responses to requests for admission containing
17 Confidential Information or Highly Confidential Information: "CONTAINS
18 CONFIDENTIAL INFORMATION" or "CONTAINS HIGHLY CONFIDENTIAL
19 INFORMATION."

20 (c) In the case of depositions and the information contained in depositions
21 (including exhibits), designation of the portions of the transcript (including
22 exhibits) which contain Confidential Information or Highly Confidential
23 Information shall be made by a statement to such effect on the record in the course
24 of the deposition by counsel for the party or witness producing such information, or
25 by letter from such counsel within thirty (30) days of receipt of the deposition
26 transcript or copy thereof (or written notification that the transcript is available.)
27 The entire deposition transcript (including exhibits) shall be treated as HIGHLY
28 CONFIDENTIAL under this Order until the expiration of the above-referenced

1 thirty-day period for designation by letter, except that the deponent may review the
2 transcript of his or her own deposition during this thirty-day period. The following
3 legend shall be placed on the front of the original deposition transcript and each
4 copy of the transcript containing Confidential Information or Highly Confidential
5 Information: "CONTAINS CONFIDENTIAL INFORMATION" or "CONTAINS
6 HIGHLY CONFIDENTIAL INFORMATION." If all or part of a videotaped
7 deposition is designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL, the
8 videocassette or other videotape container, or the CD or DVD, shall be labeled with
9 the legend provided for in paragraph 2(a) above.

10 (d) To the extent that matter stored or recorded in the form of electronic or
11 magnetic media (including information, files, databases or programs stored on any
12 digital or analog machine-readable device, computers, discs, networks or tapes)
13 ("Computerized Material") is produced by any party in such form, the producing
14 party may designate such matter as CONFIDENTIAL or HIGHLY
15 CONFIDENTIAL by cover letter referring generally to such matter, as long as the
16 CONFIDENTIAL or HIGHLY CONFIDENTIAL designation is not able to be
17 attached to the Computerized Material on an individualized document-by-document
18 or page-by-page basis. Whenever any party to whom Computerized Material
19 designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL is produced
20 reduces such material to hard-copy form, such party shall mark such hard-copy
21 form with the legend provided for in paragraph 2(a) above.

22 (e) To the extent that any party or counsel for any party creates, develops
23 or otherwise establishes on any digital or analog machine-readable device,
24 recording media, computers, discs, networks or tapes any information, files,
25 databases or programs that contain information designated CONFIDENTIAL
26 and/or HIGHLY CONFIDENTIAL, that party and/or its counsel must take all
27 necessary steps to insure that access to that electronic or magnetic media is properly
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1 restricted to those persons who, by the terms of this Order, may have access to
2 Confidential Information and/or Highly Confidential Information.

3 3. Use of Confidential Information or Highly Confidential Information.

4 Confidential Information or Highly Confidential Information shall be
5 used by any person, other than the producing party, solely for the purpose of
6 conducting the actions and shall in no event be used for any business, competitive,
7 personal, private, public or other purpose.

8 4. Filing of Confidential Materials.

9 The following provisions govern the treatment of Confidential
10 Information or Highly Confidential Information submitted as a basis for
11 adjudication of matters other than discovery motions or proceedings. These
12 provisions are subject to Central District of California Local Rule 79-5.1.

13 (a) A party that files with the Court materials designated as Confidential
14 Information or Highly Confidential Information shall comply with Local Rule 79-
15 5.1. If such information was so designated by a third party, the party submitting the
16 motion to seal will provide the Identified Representative(s) of that third party with
17 the Bates range of the information submitted by the means set forth in paragraph 8
18 below.

19 5. Disclosure of Confidential Information.

20 (a) The attorneys of record are responsible for employing reasonable
21 measures, consistent with this Order, to control access to, and distribution of
22 information designated CONFIDENTIAL pursuant to this Order.

23 (b) Access to information designated CONFIDENTIAL pursuant to this
24 Order shall be limited to:

- 25 (i) counsel for the parties (including members, associates or
26 contract attorneys of such counsel's firm), in-house litigation
27 counsel for the parties (including contract attorneys), as well as
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- 1 their paralegal, investigative, secretarial and clerical personnel
2 who are engaged in assisting such counsel in this litigation;
- 3 (ii) outside photocopying, data processing or graphic production
4 services employed by the parties or their counsel to assist in this
5 litigation;
- 6 (iii) any outside expert, consultant or investigator who is not
7 employed by or affiliated with any party or an affiliate of a party
8 and is retained by counsel for the purposes of consulting, and/or
9 testifying in this litigation, provided that paragraph 7 of this
10 Order has been complied with;
- 11 (iv) a director, officer or employee of a party charged with the
12 responsibility for making business decisions dealing directly
13 with the resolution of this action, provided that paragraph 7 of
14 this Order has been complied with.
- 15 (v) in the event litigation counsel determines in good faith that such
16 disclosure is necessary to assist in the preparation or conduct of
17 this litigation, (a) any person who has been noticed for
18 deposition and whose deposition is taken, or (b) any person who
19 has been interviewed by an attorney of record, or (c) any person
20 whose testimony is taken or is to be taken in any proceeding
21 before the Court in this litigation who in good faith is required
22 to be shown or questioned about such material in order to assist
23 such attorney in the preparation or the conduct of this litigation,
24 provided that paragraph 7 of this Order has been complied with;
- 25 (vi) any person who (a) authored or received the particular material
26 sought to be disclosed to that person (provided that the
27 document has not been altered since that person authored or
28 received the material), (b) is referenced, discussed, or

1 mentioned, in the material, (c) is currently employed by the
2 producing party or, (d) was formerly employed by the producing
3 party, but only as to the specific material to which such person
4 had access during his/her employment;

5 (vii) any person who is testifying in this matter, as to whom the
6 examining counsel has a good faith belief that the witness
7 possesses relevant information with respect to the specific
8 confidential material sought to be disclosed to that person;

9 (viii) this Court or any other Court exercising jurisdiction with respect
10 to this litigation, Court personnel, jurors, alternate jurors, and
11 qualified persons (including necessary clerical personnel)
12 recording, taking or transcribing testimony or argument at any
13 deposition, hearing, trial or appeal in this litigation; and

14 (ix) any other person to whom the party producing the Confidential
15 Information agrees in writing or on the record in advance of the
16 disclosure.

17 6. Disclosure of Highly Confidential Information.

18 (a) The attorneys of record are responsible for employing reasonable
19 measures, consistent with this Order, to control access to, and distribution of
20 information designated HIGHLY CONFIDENTIAL pursuant to this Order.

21 (b) Access to information designated HIGHLY CONFIDENTIAL
22 pursuant to this Order shall be limited to:

23 (i) counsel for the parties (including members, associates or
24 contract attorneys of such counsel's firm), in-house litigation
25 counsel for the parties (including contract attorneys), as well as
26 their paralegal, investigative, secretarial and clerical personnel
27 who are engaged in assisting such counsel in this litigation;
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- 1 (ii) outside photocopying, data processing or graphic production
2 services employed by the parties or their counsel to assist in this
3 litigation;
- 4 (iii) any outside expert, consultant or investigator who is not
5 employed by or affiliated with any party or an affiliate of a party
6 and is retained by counsel for the purposes of consulting, and/or
7 testifying in this litigation, provided that paragraph 7 of this
8 Confidentiality Order has been complied with;
- 9 (iv) in the event litigation counsel determines in good faith that such
10 disclosure is necessary to assist in the preparation or conduct of
11 this litigation, (a) any person who has been noticed for
12 deposition and whose deposition is taken, or (b) any person who
13 has been interviewed by an attorney of record, or (c) any person
14 whose testimony is taken or is to be taken in any proceeding
15 before the Court in this litigation who in good faith is required
16 to be shown or questioned about such material in order to assist
17 such attorney in the preparation or the conduct of this litigation,
18 provided that paragraphs 6(c) and 7 of this Order has been
19 complied with;
- 20 (v) any person who (a) authored or received the particular material
21 sought to be disclosed to that person (provided that the
22 document has not been altered since that person authored or
23 received the material), (b) is referenced, discussed, or mentioned
24 in the material, (c) is currently employed by the producing party,
25 (d) was formerly employed by the producing party, but only as
26 to specific material to which such person had access during
27 his/her employment, or (e) was formerly employed by the
28 producing party and is represented by the producing party's

1 attorneys of record in this action or the producing party is
2 paying for the person's legal representation;

3 (vi) any person who is testifying in this matter, as to whom the
4 examining counsel has a good faith belief that the witness has
5 knowledge of the HIGHLY CONFIDENTIAL material sought
6 to be disclosed to that person, provided that paragraphs 6(c) and
7 7 of this Order has been complied with;

8 (vii) this Court or any other Court exercising jurisdiction with respect
9 to this litigation, Court personnel, jurors, alternate jurors, and
10 qualified persons (including necessary clerical personnel)
11 recording, taking or transcribing testimony or argument at any
12 deposition, hearing, trial or appeal in this litigation; and

13 (viii) any other person to whom the party producing the Highly
14 Confidential Information agrees in writing or on the record in
15 advance of the disclosure.

16 (c) In order to prevent the dissemination of highly sensitive commercial
17 information which could cause irreparable harm, the party or third party wishing to
18 disclose HIGHLY CONFIDENTIAL materials to any person under paragraph
19 6(b)(iv) or 6(b)(vi) shall give at least three (3) court days' advance notice in writing
20 to the counsel who designated such information as HIGHLY CONFIDENTIAL,
21 stating the names and addresses of the person(s) to whom the disclosure will be
22 made, and identifying with particularity the documents and information to be
23 disclosed. If the party or third party who designated such information as HIGHLY
24 CONFIDENTIAL objects to the proposed disclosure, the designating party shall
25 immediately inform the notifying party of their intent to object and file a motion
26 with the Court providing the reasons for the objection. Such motion shall strictly
27 comply with Local Rule 37 and shall be made as soon as practicable. If such notice
28 is provided, disclosure of the HIGHLY CONFIDENTIAL materials to the person

1 under paragraph 6(b)(iv)(b) will not be permissible without leave of the Court
2 unless and until the time to file a motion with the Court under this paragraph has
3 expired and no motion has been made. If a party fails to provide the notice required
4 by this provision, that party thereby forfeits their ability to disclose the HIGHLY
5 CONFIDENTIAL materials or information as intended.

6 7. Notification of Confidentiality Order.

7 Confidential Information and Highly Confidential Information shall
8 not be disclosed to persons described in paragraphs 5(b)(iii)-(v), or 6(b)(iii-iv),
9 unless and until such person has executed an Agreement of Confidentiality in
10 substantially the same form attached hereto as Exhibit A. The originals of such
11 Agreements shall be maintained by counsel for the party who obtained them until
12 the final resolution of this litigation.

13 8. Notice to Third Parties

14 All notices under this Order to a third party shall be provided to the
15 Identified Representative(s) of the third party by email no later than noon on the
16 next business day of any action triggering notice to the third party. A third party's
17 Identified Representative may be designated by the third party by email to each
18 party's counsel of record. If an Identified Representative has not been designated
19 by the third party before the date on which the party seeks to submit that third
20 party's Confidential or Highly Confidential information, then notice shall be
21 provided to counsel who produced such information on behalf of the third party.

22 9. Use of Confidential or Highly Confidential Material at Trial

23 To the extent a party seeks to use CONFIDENTIAL or HIGHLY
24 CONFIDENTIAL material at a hearing or at trial, the question of the procedure for
25 the use of that information shall be addressed to the judicial officer conducting the
26 proceeding, at the appropriate time.
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1 10. Objections to Designations.

2 Any disputes regarding the designation of confidential information
3 shall strictly comply with Local Rule 37. A party shall not be obligated to
4 challenge the propriety of a confidential designation at the time made, and a failure
5 to do so shall not preclude a subsequent challenge thereto. In the event a party
6 objects to the designation under this Order by another party of any material, the
7 objecting party shall consult with the designating party to attempt to resolve their
8 differences. If the parties are unable to reach an accord as to the proper designation
9 of the material, the objecting party may file and serve a motion, pursuant to Local
10 Rule 37, that identifies the challenged material and sets forth in detail the basis for
11 the challenge. If such a motion is made, the designating party would have the
12 burden to establish that the designation is proper. If no such motion is made, the
13 material will remain as designated. Any documents or other materials that have
14 been designated CONFIDENTIAL or HIGHLY CONFIDENTIAL shall be treated
15 as CONFIDENTIAL or HIGHLY CONFIDENTIAL until such time as the Court or
16 any magistrate to whom this matter is assigned rules that such material should not
17 be treated as CONFIDENTIAL or HIGHLY CONFIDENTIAL.

18 11. Preservation of Rights and Privileges.

19 Nothing contained in this Order shall affect the right, if any, of any
20 party or witness to make any other type of objection, claim, or other response to
21 discovery requests, including, without limitation, interrogatories, requests for
22 admissions, requests for production of documents or questions at a deposition. Nor
23 shall this Order be construed as a waiver by any party of any legally cognizable
24 privilege to withhold any Confidential Information or Highly Confidential
25 Information, or of any right which any party may have to assert such privilege at
26 any stage of this litigation.
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12. Return or Destruction of Materials.

Within sixty (60) business days after the final resolution of this litigation, all Confidential Information or Highly Confidential Information shall be returned to counsel for the party that produced it or destroyed. As to those materials that contain or reflect Confidential Information or Highly Confidential Information, but that constitute or reflect counsel's work product, counsel of record for the parties shall be entitled to retain such work product in their files in accordance with the provisions of this Order, so long as it is clearly marked to reflect that it contains information subject to this Order. Counsel shall be entitled to retain pleadings, affidavits, motions, briefs, other papers filed with the Court, deposition transcripts, and the trial record (including exhibits) even if such materials contain Confidential Information or Highly Confidential Information, so long as such Confidential Information or Highly Confidential Information, in accordance with the provisions of this Order, are clearly marked to reflect that they contain information subject to this Order.

13. Inadvertent or Unintentional Disclosure.

(a) The inadvertent or unintentional disclosure by the producing party of Confidential Information or Highly Confidential Information, or information subject to a claim of privilege, including, but not limited to, the attorney-client privilege, or work product doctrine (a "Privileged Document"), regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of privilege.

(b) A producing party that inadvertently fails to designate discovery material CONFIDENTIAL or HIGHLY CONFIDENTIAL pursuant to this Order at the time of production shall be entitled to make a correction. Such correction and notice thereof shall be made in writing, accompanied by substitute copies of each item of discovery material, appropriately designated. Those parties who received the discovery material prior to notice of misdesignation by the producing party

1 shall, within ten (10) days of receipt of the substitute copies, destroy or return to the
2 law firm representing the producing party all copies of such misdesignated
3 documents. Those parties who reviewed the misdesignated discovery material prior
4 to notice of the misdesignation by the producing party shall abide by the provisions
5 of this Order with respect to the use and disclosure of any information contained in
6 the misdesignated materials.

7 (c) A party who has inadvertently produced a Privileged Document may
8 provide a written request for the return of such item or items of information.
9 Because of the large volume of electronic documents that the parties anticipate will
10 be produced in this case, there is a presumption that the production of any
11 Privileged Document is inadvertent. Accordingly, the receiving party shall return
12 such items within ten (10) days of receiving a written request.

13 14. A party's compliance with the terms of this Order shall not operate as an
14 admission that any particular document is or is not (a) confidential, (b) privileged or
15 (c) admissible in evidence at trial.

16 15. Any party or person in possession of Confidential Information or Highly
17 Confidential Information or a Privileged Document, with respect to which the
18 producing party has asserted a claim of privilege in accordance with paragraph 12,
19 who receives a subpoena (or other process) from any person (including natural
20 persons, corporations, partnerships, firms, governmental agencies, departments or
21 bodies, boards or associations) who is not a party to this Order, which subpoena
22 seeks production or other disclosure of such Confidential Information or Highly
23 Confidential Information or a Privileged Document, shall promptly give written
24 notice by facsimile to counsel for the party who produced or designated the
25 materials as confidential or privileged identifying the materials sought and
26 enclosing a copy of the subpoena or other process. The party or person receiving
27 the subpoena shall also inform the person seeking the Confidential Information or
28 Highly Confidential Information or a Privileged Document that such information or

1 document is either confidential or privileged, subject to this Order and may not be
2 disclosed without the consent of the party that produced the Confidential
3 Information or Highly Confidential Information or designated the document as
4 privileged, or court order. The person subject to the subpoena or other process shall
5 not produce or disclose the requested information until ordered to do so by a court
6 of competent jurisdiction.

7 16. No party shall be subject to sanctions under this Order so long as the party
8 was acting in good faith and immediately undertook any necessary or reasonable
9 remedial actions.

10 17. Upon the final resolution of this litigation, the provisions of this Order shall
11 continue to be binding. This Court expressly retains jurisdiction over this action for
12 enforcement of the provisions of this Order following the final resolution of this
13 litigation.

14 18. This Order is binding on all parties to this action and on all third parties or
15 other non-parties who have been served with a copy of this Order, and shall remain
16 in force and effect until modified, superseded, or terminated by consent of the
17 parties or by Order of the Court.

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19 **SO ORDERED**

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21 DATED: March 28, 2011



The Honorable Jay C. Gandhi
United States Magistrate Judge

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EXHIBIT A

EXHIBIT A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

KYLE SAWYER, Individually and
on behalf of all others similarly
situated,

Plaintiff,

v.

BILL ME LATER, INC., EBAY
INC., PAYPAL, INC., and
DOES 1-100,
Defendants.

Case No. CV-10-4461 SJO (JCGx))

CERTIFICATION

Judge: Hon. S. James Otero
Magistrate Judge: Hon Jay C. Gandhi

1. My name is _____.

I live at _____.

I am employed as (state position) _____

by (state name and address of employer)

_____.

2. I have read the Confidentiality Order that has been entered in this case, and a copy of it has been given to me. I understand the provisions of this Order, and agree to comply with and to be bound by its provisions.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ (date)

by _____ (signature)

CERTIFICATION
NO. CV-10-4461 SJO (JCGx)